

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:15-CR-166-1BR

UNITED STATES OF AMERICA)
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) ORDER
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This matter is before the court on defendant's motion to compel defense counsel to surrender defendant's case file, (DE # 441), and to unseal affidavits filed in support of warrants, (DE # 449).

In his first motion, defendant contends that defense counsel has refused to turn over to him certain portions of his case file. (DE # 441, at 1.) Defendant states that he intends to file a 28 U.S.C. § 2255 motion and needs the records from defense counsel to prepare such a motion. (Id. at 1-2.) Defendant has previously filed a § 2255 motion. (DE # 394.) The court dismissed it on the government's motion, (DE # 411), and the Fourth Circuit Court of Appeals recently dismissed defendant's appeal of that order, (DE # 450). Because defendant has filed one § 2255 motion, he must obtain authorization from the Fourth Circuit Court of Appeals before filing another § 2255 motion. See 28 U.S.C. §§ 2244(b), 2255(h). Accordingly, defendant's motion to compel defense counsel to produce portions of his case file is DENIED WITHOUT PREJUDICE, subject to renewal should the appellate court authorize defendant to file another § 2255 motion.

In his second motion, defendant requests that the court order the unsealing of affidavits filed in support of warrants issued by the Eastern District of New York and executed on 6 May

2015 and warrants issued by this district and filed (not executed) on 7 May 2015. (DE # 449.) Defendant's motion does not reference any case numbers associated with the warrants. In relation to this case, in May 2015, search and seizure warrants were issued in this district by U.S. Magistrate Judge Robert T. Numbers, II in case numbers 5:15-MJ-1557, 5:15-MJ-1558, 5:17-MJ-1559, and 5:15-MJ-1560. The applications for those warrants are sworn and are not sealed, and defendant has received copies of the applications and warrants, (see DE ## 446-2, 448-1). Separate affidavits were not filed in support of the warrants. Regarding any warrant issued by the Eastern District of New York, this court does not have the authority to order the unsealing of a document filed in another court. Defendant's motion to unseal is DENIED.

This 24 August 2021.



W. Earl Britt
Senior U.S. District Judge